

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

YVETTE BAILEY,

Plaintiff,

v.

ALPHA TECHNOLOGIES
INCORPORATED, *et al.*,

Defendants.

CASE NO. C16-0727-JCC

ORDER GRANTING IN PART
AND DENYING IN PART
PLAINTIFF'S MOTION TO
COMPEL

This matter comes before the Court on Plaintiff Yvette Bailey's motion to compel (Dkt. No. 35). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS in part and DENIES in part the motion for the reasons explained herein.

I. BACKGROUND

The underlying facts of this case have been discussed at length in a previous order. (*See* Dkt. No. 16 at 1–3.) Plaintiff's claims include wrongful termination, failure to pay overtime wages, willful withholding of wages, and defamation. (*See* Dkt. No. 30.)

Relevant to this motion, the Court entered the parties' proposed Electronically Stored Information (ESI) Agreement. (Dkt. No. 22.) The ESI agreement includes acceptable formats for production. These acceptable formats include, but are not limited to, native format, multi-page

1 Tagged Image File Format (TIFF), single-page TIFF, and searchable Portable Document Format
2 (PDF). (Dkt. No. 22 at 5.) Plaintiff asked that all ESI requested be produced in its native format.
3 (Dkt. No. 36 at ¶ 3; *see, e.g.*, Dkt. No. 36-1 at 2.) Defendants responded to the discovery
4 requests, but none of the documents, except for Excel spreadsheets and PowerPoint
5 presentations, were in native format. (Dkt. No. 36 at ¶ 4.)

6 On September 14, 2016, the parties conducted a discovery conference on the issue of ESI
7 format production. (*Id.* at ¶ 5.) Defendants maintained their refusal to produce the remaining
8 documents, mostly emails, in native format. (*Id.*) On October 14, 2016, the parties met again to
9 discuss specific interrogatories and requests for production. (*Id.* at ¶ 6.) On November 2, 2016,
10 Defendants restated their arguments and refusals to comply with some of Plaintiff's requests.
11 (Dkt. No. 36-9.) On December 15, 2016, Defendants Alpha and Altair supplemented their
12 responses. (Dkt. No. 36-10.) Over four months later, Plaintiff filed this motion to compel. (Dkt.
13 No. 35.)

14 **II. DISCUSSION**

15 **A. Legal Standard**

16 Pursuant to Federal Rule of Civil Procedure 26(b)(1), “[p]arties may obtain discovery
17 regarding any nonprivileged matter that is relevant to any party’s claim or defense and
18 proportional to the needs of the case.” When addressing proportionality, the Court considers “the
19 importance of the issues at stake in the action, the amount in controversy, the parties’ relative
20 access to relevant information, the parties’ resources, the importance of the discovery in
21 resolving the issues, and whether the burden or expense of the proposed discovery outweighs its
22 likely benefit.” *Id.* This Court *strongly* disfavors discovery motions and prefers that the parties
23 resolve discovery issues on their own. (*See* Dkt. No. 3.) However, if requested discovery is not
24 answered, the requesting party may move for an order compelling such discovery *after* having
25 met and conferred with the party failing to make the disclosure. Fed. R. Civ. P. 37(a)(1). The
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1 Court has broad discretion to decide whether to compel disclosure of discovery. *Phillips ex rel.*
2 *Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002).

3 **B. Native Format Production**

4 Plaintiff objects to Defendant’s refusal to produce all of the documents requested in
5 native format. (Dkt. No. 35 at 5, 10–12.) Native format production is one in which ESI is
6 produced in its “native application,” which allows the parties to see the document’s metadata.
7 (Dkt. No. 41 at ¶ 3.) For example, a document created using Microsoft Word would be produced
8 as a Word document file. Comparatively, PDFs and TIFFs are an “imaged production” in which
9 ESI is produced in a “static image format.” (*Id.*) Essentially, PDFs and TIFFs are screenshots of
10 the ESI whose content cannot be edited and metadata is not visible.

11 Here, Defendants have produced certain ESI files in native format, and others in imaged
12 formats—“searchable PDF and TIFF, with accompanying load files containing extracted text and
13 all metadata required by the ESI order.” (*Id.* at ¶ 4.) Plaintiff argues that she is entitled to ESI in
14 native format because it would provide important and relevant metadata information, including
15 the ability to accurately track communications exchanged in this case between the United States,
16 Bahamas, and China. (Dkt. No. 35 at 11–12.)

17 Defendants’ arguments that the production complies with the ESI order and that the
18 mixed format production conforms to “best practices” in ESI discovery, (Dkt. No. 38 at 11–13),
19 are unavailing. Native format production also complies with the Federal Rules of Civil
20 Procedure and this case’s ESI order. Moreover, the Court finds that metadata and native format
21 production are relevant and proportional to the needs of discovery. It is untenable to assert in this
22 technology-driven age of litigation that images of electronic documents provided in TIFF and
23 PDF form offer all of the relevant information possible. The metadata that is not visible in TIFF
24 and PDF productions, but is visible in native format production, is relevant information.
25 Therefore, the Court GRANTS Plaintiff’s motion on this issue.

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1 **C. Alpha and Altair's Interrogatory Responses**

2 1. Interrogatory 1

3 Plaintiff requested Defendants Alpha and Altair identify “every individual who assisted
4 in locating information and/or documentation responsive to Plaintiff’s first set of discovery, or
5 who provided information and/or documents responsive to Plaintiff’s first set of discovery.”
6 (Dkt. No. 36-1 at 12.) Defendants objected because the interrogatory seeks information
7 protected by the attorney-client privilege and work product doctrine. (Dkt. No. 35-5 at 12.) The
8 request for the identities of all individuals who assisted in locating information is too broad and
9 is protected material. However, the identities of individuals who supplied information and
10 documents is information that goes to who has knowledge of the facts related to Plaintiff’s
11 claims. See *Strauss v. Credit Lyonnais, S.A.*, 242 F.R.D. 199, 231–32 (E.D.N.Y. 2007).
12 Therefore, the Court DENIES Plaintiff’s motion as to the first clause of Interrogatory 1, but
13 GRANTS Plaintiff’s motion as to identifying every individual who provided information and/or
14 documents responsive to Plaintiff’s first set of discovery.

15 2. Interrogatory 9

16 Plaintiff requested that Defendants Alpha and Altair identify every person employed by
17 Alpha and Altair from January 1, 2010, to present. (Dkt. No. 36-1 at 14.) Defendants objected
18 because the request is overbroad, is unduly burdensome, is not reasonably calculated to lead to
19 the discovery of admissible evidence, and improperly invades the privacy interests of third
20 parties. (Dkt. No. 36-5 at 17.) However, on December 15, 2016, Defendants supplemented this
21 response by providing information about Plaintiff’s employment. (Dkt. No. 36-10 at 6.) The last
22 time the parties met and conferred was October 15, 2016. (Dkt. No. 36 at ¶ 4.) Therefore, in
23 accordance with Federal Rule of Civil Procedure 37(a)(1) and in an effort to promote resolution
24 without Court involvement, the Court ORDERS the parties to meet and confer in regards to
25 Interrogatory 9.

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1 3. Interrogatory 14

2 Plaintiff requested Defendants Alpha and Altair identify Plaintiff's job titles, descriptions
3 of her duties, and to whom she reported. (Dkt. No. 36-1 at 15.) Defendants responded "within the
4 period relevant to this lawsuit, Plaintiff held the position of Senior International Buyer . . . and
5 reported directly to Fredrick Kaiser." (Dkt. No. 36-5 at 18.) However, Defendants objected to the
6 rest of the request as unduly burdensome and not reasonably calculated to lead to the discovery
7 of admissible evidence to the extent it seeks information related to Plaintiff's employment
8 outside the three-year statute of limitations. (*Id.*) On December 15, 2016, Defendants
9 supplemented this response by providing more information about Plaintiff's employment. (Dkt.
10 No. 36-10 at 8.) The last time the parties met and conferred was October 15, 2016. (Dkt. No. 36
11 at ¶ 4.) Therefore, in accordance with Federal Rule of Civil Procedure 37(a)(1) and in an effort to
12 promote resolution without Court involvement, the Court ORDERS the parties to meet and
13 confer in regards to Interrogatory 14.

14 4. Interrogatory 15

15 Plaintiff requested Defendants Alpha and Altair identify all lawsuits in which either has
16 been a party or witness in the last 15 years. (Dkt. No. 36-1 at 15.) Defendants objected because
17 the request is overbroad, unduly burdensome, and not reasonably calculated to lead to the
18 discovery of admissible evidence. (Dkt. No. 36-5 at 19.) The Court concludes that this request is
19 overbroad and not proportional to the needs of the case. The Court DENIES Plaintiff's motion as
20 to this issue.

21 5. Interrogatory 17

22 Plaintiff requested Defendants Alpha and Altair identify every person or business
23 involved in the purchase of components from China and describe each of their roles in the
24 purchase and how their services justify marking up the component prices. (Dkt. No. 36-1 at 15.)
25 Defendants responded that they coordinate "purchasing with numerous vendors, including
26 vendors in China. [Defendants] will meet and confer with Plaintiff regarding the appropriate

scope of a search for information responsive to this interrogatory.” (Dkt. No. 36-5 at 20.) However, Defendants objected that the interrogatory is overbroad and vague. (*Id.*) On December 15, 2016, Defendants supplemented this response by providing more details regarding the purchase of components in China. (Dkt. No. 36-10 at 10.) The last time the parties met and conferred was October 15, 2016. (Dkt. No. 36 at ¶ 4.) Therefore, in accordance with Federal Rule of Civil Procedure 37(a)(1) and in an effort to promote resolution without Court involvement, the Court ORDERS the parties to meet and confer in regards to Interrogatory 17.

D. Borsari and Kaiser’s Interrogatory Reponses

1. Interrogatory 3

Plaintiff requested Defendants Borsari and Kaiser state their involvement in each Alpha Group company. (Dkt. No. 36-7 at 14.) Defendant Borsari answered that she owns 100% of Altair, (Dkt. No. 36-8 at 14), and Defendant Kaiser answered that he owns 100% of Alpha Technologies, Inc., (Dkt. No. 36-7 at 14.) Defendants refused to respond further as their ownership interests, if any, in non-party entities are irrelevant to Plaintiff’s claims (Dkt. No. 36-1 at 15.) The Court concludes that Plaintiff has failed to articulate the relevance of the undisclosed information to this case. These other Alpha Group companies are unrelated, separate legal entities that are not defendants in this matter. The Court DENIES Plaintiff’s motion as to this issue.

2. Interrogatory 6 (Borsari) and Interrogatory 7 (Kaiser)

Plaintiff requested Defendants Borsari and Kaiser state their involvement in Telecomponents & Supplier, Inc. (TCS). (Dkt. No. 36-7 at 17.) Defendant Borsari stated that TCS provided products and services to Altair and she met with employees of TCS. (Dkt. No. 38-8 at 16–17.) Defendant Kaiser responded that he is the sole shareholder of TCS. (Dkt. No. 38-7 at 17.) These responses were not challenged by Plaintiff until now and have never been the subject of a meet and confer meeting. (Dkt. No. 40 at ¶ 40; *see* Dkt. No. 40 at 32–41.) Therefore, in accordance with Federal Rule of Civil Procedure 37(a)(1) and in an effort to promote

1 resolution without Court involvement, the Court ORDERS the parties to meet and confer in
2 regards to Interrogatory 6 (Borsari) and Interrogatory 7 (Kaiser).

3 **III. CONCLUSION**

4 For the foregoing reasons, Plaintiff's motion to compel (Dkt. No. 35) is GRANTED in
5 part and DENIED in part. Plaintiff's request for an award of reasonable fees and costs incurred
6 in bringing this motion is DENIED. *See* Fed. R. Civ. P. 37(a)(5)(C). The Court ORDERS the
7 following:

- 8 1. Within a week of entry of this order, Defendants are compelled to PRODUCE all
9 ESI in its native format.
- 10 2. Within a week of entry of this order, Defendants Alpha and Altair must
11 PRODUCE the identities of every individual who provided information and/or
12 documents responsive to Plaintiff's first set of discovery (Interrogatory 1).
- 13 3. Within a month of entry of this order, the parties must MEET AND CONFER to
14 discuss the unresolved discovery issues and FILE a joint status report with the
15 Court. These unresolved issues include Interrogatories 9, 14, and 17 (Defendants
16 Alpha and Altair); Interrogatory 6 (Defendant Borsari); and Interrogatory 7
17 (Defendant Kaiser). The parties are advised that discovery motions are disfavored
18 and the Court strongly prefers that the parties settle these disputes without court
19 involvement.

20 DATED this 1st day of June 2017.

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24 John C. Coughenour
25 UNITED STATES DISTRICT JUDGE
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